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ORIGINAL
FILE

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February 12, 1993

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WRITTEN EX PARTE

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

FEB 12 1993

Re: CC Docket No. 92-90

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

This letter is submitted ex parte on behalf of AlphaNet Telecom Inc. by its undersigned attorney. AlphaNet is service provider of InnFax, an innovative new in-room hotel facsimile service that enables guests to send and receive faxes from their own hotel rooms. AlphaNet submits this letter in order to present factual information about the InnFax service for the record. AlphaNet believes that an understanding of the operation of its InnFax service will help illuminate the issues presented for reconsideration in this proceeding relating to the application of the fax branding requirement.

THE FCC'S ORDER

On October 16, 1992, the Commission issued its Report and Order in CC Docket No. 92-90 adopting rules to implement the Telephone Consumer Protection Act of 1991 ("TCPA") (47 U.S.C. § 227 (1992)). New Section 227(d)(1)(B) of the Communications Act of 1934, as amended, prohibits "any person" from using a computer or other electronic device to send "any message via a telephone facsimile machine" unless such person:

clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

47 U.S.C. § 227(d)(1)(B).

In addition, new Section 227(d)(2) requires the FCC to revise its regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine manufactured on or after December 20, 1992 must "clearly mark"

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specified identifying information (date, time, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.) (47 U.S.C. § 227(d)(2)). The FCC's October 1992 Order adopted rules which are intended to implement the legislative language of the TCPA; these rules include the so-called "fax branding" requirements of Section 68.318(c)(3).^{1/}

PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

On November 20, 1992, several parties filed petitions for reconsideration and/or clarification of the Order, including a joint filing by the Consumer Electronics Group of the Electronic Industries Association and the Telecommunications Industry Association (EIA/CEG/TIA), and petitions by Tandy Corporation, US West, the Fair Fax Coalition, and Xpedite Systems, Inc. Among the issues raised in the EIA/CEG/TIA and Tandy petitions is whether the TCPA, and Section 68.318(c)(3) of the FCC's Rules issued thereunder, require that all telephone facsimile machines manufactured on or after December 20, 1992 be capable of branding each fax message with the identifying information, or whether the machines automatically must brand each fax message with the information. These petitioners argue that a requirement imposed on manufacturers that machines automatically brand each fax, rather than be capable of branding, is an unreasonable reading of the statute that would impose huge cost burdens on manufacturers and, contrary to the statutory intent, make manufacturers responsible for users' actions which cause inaccurate branding information to be displayed. An automatic branding requirement also would fail to prevent users from violating their obligations by disabling the automatic branding functionality.

EIA/CEG/TIA and Tandy argue further that in any event fax machines should not be required to have an internal timekeeping capability. They explain that such a requirement would substantially raise the prices of many fax machines and would be impractical to implement on an automatic basis given the sale and

^{1/} Section 68.318(c)(3) provides that: "It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. Telephone facsimile machines manufactured on and after December 20, 1992 must clearly mark such identifying information on each transmitted message." 47 C.F.R. § 68.318(c)(3) (1992).

use of fax machines in different time zones and the ease of portability of the machines. Tandy also points out that an internal timekeeping requirement would not prevent users from disabling the automatic functionality and misusing the machine.

US West and other parties request in their petitions that the FCC clarify that the responsibility for the fax branding requirement contained in Section 227(d)(1)(B) of the TCPA applies to the actual user of the fax machine, as opposed to the service provider, and that service providers therefore cannot be held liable for the actual user's violation of Section 68.318(c)(3) of the FCC's Rules. AlphaNet agrees with US West that this is the proper interpretation of the TCPA because it comports with the legislative history and the FCC's conclusion that "carriers" or other providers are not liable for the content of users' fax messages. In responding to the pending petitions, the FCC should clarify that the non-manufacturer liability established under Section 227(d)(1)(B) of the Act and Section 68.318(c)(3) of the Commission's Rules extends only to fax machine users in the context of a service such as InnFax and not to the provider who makes available such service. Obviously, the provider of a service such as InnFax has no means of monitoring or ensuring compliance with the non-manufacturer (i.e. individual user) responsibilities under Section 227(d)(1)(B) of the Act and Section 68.318(c)(3) of the FCC's Rules.

THE ALPHANET SERVICE

With regard to the issue of whether the TCPA requires fax machines either automatically to brand messages or to be capable of branding messages, petitioners make valid arguments why the FCC should require manufacturers to provide only the capability of fax branding. An understanding of how the InnFax service operates should help the Commission understand why the EIA/CEG/TIA and Tandy petitions should be granted in this respect or, if not granted in full, at the very least why the Commission should clarify the application of the fax branding requirements with respect to the particular InnFax service application described herein.

InnFax service, which currently is available in thousands of hotel rooms across North America, enables hotel guests to send or receive faxes from their individual hotel rooms. The equipment used by the customer to access the InnFax service includes a fax machine (which is incapable of autodialing or otherwise being used in a manner which facilitates the "broadcasting" of faxes to multiple telephone numbers) and the patented AlphaLink computer device, a small "black box" that connects the fax machine and the phone outlet. A hotel guest desiring to send an InnFax message is provided with a unique private fax telephone number for the duration of his or her hotel stay; this number automatically is disabled upon check-out, and each subsequent guest in the room

using the same fax machine is given a different private fax number. For each fax, the hotel guest is provided with a fax cover sheet which he or she fills out manually with specified information, including his or her name, hotel room and telephone number, the date and time, the recipient's name and fax number, and the guest's private in-room fax number as well. A sample copy of the InnFax cover sheet is attached. The guest then places the document in the tray of the fax machine and dials the telephone number of the receiving machine.

The provision of the InnFax cover sheet provides the guest with the means to comply fully with the fax branding requirement, and the instructions accompanying the cover sheet will state that the Telephone Consumer Protection Act requires that the identifying information on the cover sheet be completed.

A party desiring to send a fax message to the InnFax hotel guest sends the fax to the recipient's unique temporarily assigned private fax telephone number, that number being a randomly selected Direct Inward Dial (DID) number terminating at the InnFax message handling center, and temporarily associated with the fax machine located in the hotel room. This association is made through the AlphaLink device, which receives a paging signal via a nationwide radio and satellite paging network from the InnFax messaging center notifying it that a fax has just been received and is awaiting retrieval. Thus alerted, the AlphaLink device then places a call to the InnFax messaging center to retrieve the fax that has just been received, and prints it on the in-room fax machine to which it is connected.

Because of the technology used in providing InnFax service, the fax machine has no way of knowing the DID number temporarily assigned to it, if indeed such a number was assigned at all. Many guests wish only to send faxes, in which case no number is assigned to the in-room fax machine. Even if a DID number was temporarily assigned, it is taken out of service as soon as the guest checks out of the room, and any attempts to call that number after checkout will result in an "Out of Service" message.

Thus, it is important to emphasize that for outgoing fax transmissions there are no telephone numbers actually associated with the individual fax machines in the hotel rooms. In fact, the hotel guest's unique private number is associated with his or her machine only to the extent that the messaging center requires an address to send an incoming fax message. Although the customer may "perceive" his or her unique private telephone number to be an actual telephone number associated with that machine, in reality the telephone number exists only in InnFax's messaging center, and not at the telephone line to which the fax machine is attached at the hotel.

FAX BRANDING CAPABILITY

The operation of the InnFax service, as described above, demonstrates why Section 68.318(c)(3) of the Commission's Rules, at the very least in the context of a service such as the InnFax service, ought not to be interpreted to require that manufacturers of fax machines program their machines in advance automatically to brand all fax messages with the required identifying information, as opposed to requiring that manufacturers produce machines which have the capability of being programmed by the user to supply such information. First, a requirement that all fax machines automatically stamp the date and time on fax transmissions would be extremely impractical in the case of InnFax service. Because the service is used by individual fax machines located all across North America, a manufacturer simply would be unable to determine in advance the specific time zone where particular machines would be used, and, therefore, what specific date and time information to program into each machine. Moreover, twice a year it would be necessary for technicians physically to enter every one of thousands of hotel rooms throughout North America that are using InnFax service and alter the date and time stamp programming to reflect the change in standard or daylight savings time. This would add substantially to the costs of providing the service. Furthermore, a requirement that all fax machines automatically date and time stamp each fax would make it infeasible for a service such as InnFax to move machines among hotels located in various time zones as changes in business conditions or business plans warrant.^{2/}

Second, manufacturers obviously are unable to know in advance the individual names and telephone numbers of the final end users of the fax machines in order to program each machine to brand this information on every fax message, and Congress could not have assumed otherwise. This is obviously true more specifically in the case of InnFax service, where thousands of fax machines will be used on an ongoing basis by different guests, often on successive nights. While the InnFax trade name can be input into all fax machines used by InnFax, it would not be possible for the machines to be programmed in advance to clearly mark the name of each "sender" if this were interpreted to mean the individual hotel guest. In addition, as explained

^{2/} AlphaNet suggests that, should the Commission nevertheless require automatic fax branding, a universally-recognized time measurement, such as Universal Time Coordinate (UTC), formerly Greenwich Meridian Time, should be considered an acceptable alternative to "local" time branding because at least this would allow manufacturers to program the fax machine's date and time stamp on a one-time-only basis.

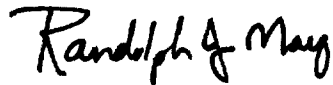
above there are no telephone numbers actually associated with the InnFax machines because the hotel guest's unique private number corresponds to numbers assigned from the InnFax message handling center. Thus, the individual InnFax machines located in the hotel rooms are simply unable to be programmed to mark each fax message with the actual fax telephone number of the sender. The private number could not be placed automatically on each fax message because the private fax number changes with each new guest. In turn, the hotel switchboard telephone number would not be a feasible alternative "phone number" because this number would be extremely confusing to fax recipients, most of whom mistakenly would believe that the hotel's telephone number was in fact an appropriate telephone number for a return fax to the sender, which it is not.

Finally, an interpretation of Section 227(d)(2) of the TCPA which requires only that all fax machines which are manufactured on or after December 20, 1992 be capable of clearly marking the specified information, as opposed to an interpretation which requires that all machines which are manufactured on or after that date automatically to mark such information on each fax, would be more consistent with the obvious statutory intent of the Act. This is because Section 227(d)(1)(B) will continue to make it unlawful in any event for the user of the fax machine to send a fax without the specified information. As long as each fax message which is sent contains the specified information, whether inserted automatically by the machine or manually through the completion of a fax cover sheet which itself includes the required information, the statutory purpose is served of requiring the availability of identifying information.

While Congress wanted to make available the capability of clearly marking each fax so that, in appropriate situations and where feasible, the user could program in the required information to be used over and over again as a matter of convenience, Congress did not intend that automatic branding be the only acceptable method of providing the required information. Otherwise, Section 227 (d)(1)(B) would have been drafted to prohibit a user from providing the required information manually on a standard form of fax cover page when the sender is using a machine manufactured on or after December 20, 1992. An interpretation of Section 227(d)(2) that each machine manufactured on or after December 20, 1992 must automatically mark the required information is inconsistent with the availability of an option under Section 227(d)(1)(B) authorizing the user to comply with the branding requirement either automatically or manually as long as the specified information is provided in any event.

I appreciate the opportunity to submit this letter for the record.

Sincerely,

A handwritten signature in cursive script that reads "Randolph J. May".

Randolph J. May
Counsel for AlphaNet Telecom Inc.

Attachment

cc: James R. Keegan, Chief, Domestic Facilities Division
Suzanne Hutchings, Domestic Facilities Division

Important Information

INNFATM HOTEL FACSIMILE SERVICES

Sending & Receiving

Before you can send or receive a fax you must obtain an instruction sheet and private telephone number. Follow the instructions on the card attached to the fax machine. Press



In a moment you will receive a fax with instructions, rates and a private fax phone number for your exclusive use during your stay in this room. There is no charge for this. You pay only for actual pages sent or received.

For Your Security

Immediately following your check-out, this number will be automatically terminated. To protect your privacy, the next guest in this room will get a new and different number.

Lost Instructions?

If you misplace your instruction sheet or forget your private fax number, your same number and instruction page will be re-issued if you once again press



Out Of Paper?

Normally, paper is changed by housekeeping staff. If you run out of fax paper and wish to replace the roll yourself, the procedure is very simple.

If a colored stripe appears on the edge of received pages, or if the OUT OF PAPER light flashes, the paper must be replaced immediately.

Locate a fresh roll of fax paper in the room. It is usually found in the desk drawer, the top of the closet or one of the bureau drawers. If you can't find a roll please call the front desk by pressing 0 on your telephone.

Press the button on the top right panel of the machine. The panel will open and 4 beeps will be heard. Remove the old roll and place the new roll into the well. Note the paper replacement diagrams inside the machine. They show how the paper is to be loaded — with the leading edge of

the paper placed under the green bar. Now close the top lid. A short piece of paper will be fed from the back of the machine. The paper is now properly loaded.

Paper Jams

If some of the pages that you are sending should jam, pull the top of the front panel — just above the InnFax logo — toward you. Remove the jammed pages, push the cover closed and then reload the pages to be sent.

Special Features

- **REQUEST HOTEL BILL**
SPEAKER,*9,8 To review your hotel bill at any time, press SPEAKER,*9,8. A fax copy of your hotel bill will arrive momentarily. This service is free. Call the hotel operator for availability.
- **TERMINATE SERVICE**
SPEAKER,*9,9 When you check-out of this room, the fax number assigned is automatically terminated. However, if you wish to immediately terminate fax service, press SPEAKER,*9,9 on the fax machine.
- **HOLD FAX DELIVERY**
SPEAKER,*9,1 To place incoming faxes on hold, either at night, or so that anyone else in the room is not able to see incoming faxes, press SPEAKER,*9,1 on the fax machine. All faxes sent to your private fax number will be held within the InnFax system until you press SPEAKER,*9,2. The InnFax system is completely automatic. No one but you will see your faxes.
- **RESUME FAX DELIVERY**
SPEAKER,*9,2 When you wish to start receiving faxes again, press SPEAKER,*9,2 on the fax machine. Any faxes that have been sent to you will be immediately delivered and any new faxes sent to you thereafter will arrive normally.

*Please note: If you have placed incoming faxes on hold, and you do not press SPEAKER,*9,2 before you check out, all faxes held within the InnFax system will be purged. We assume no liability for faxes deleted by the system upon check-out. You must press SPEAKER,*9,2 before checking out to ensure that all held faxes are delivered.*

The Telephone Consumer Protection Act of 1991 requires that you complete the identifying information on the reverse side of the page.

If you require further information or assistance please press 0 on your telephone

InnFax is a service of AlphaNet Telecom Inc.
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InnFax

HOTEL FACSIMILE SERVICES

Private In-Room Fax Transmission

DATE: _____ TIME: _____

SENT TO: _____

AT FAX NUMBER: _____

SENT BY: _____

I AM STAYING AT THE: _____ HOTEL IN: _____

I WILL BE HERE UNTIL: _____

THE HOTEL NUMBER IS: () _____ MY ROOM NUMBER IS: _____

MY PRIVATE IN-ROOM
FACSIMILE NUMBER IS: (716) _____

*Hotel area code and InnFax area code
are not necessarily the same.*

TOTAL PAGES SENT: _____ INCLUDING THIS PAGE.

